



Sr. No.	Date	Orders
		<p>* <b>IN THE HIGH COURT OF DELHI AT NEW DELHI</b></p> <p>+ <b>ITA 454/2005 &amp; ITA 970/2005</b></p> <p><b>THE COMMISSIONER OF INCOME TAX</b> ..... Appellant  <b>Through : Mr. Sanjeev Sabharwal, Adv.</b></p> <p>versus</p> <p><b>M/S SAHARA INDIA CORPORATION LTD.</b> ..... Respondent  <b>Through : Mr. R.J. Pardiwalla, Adv.</b></p> <p><b>CORAM:</b>  <b>HON'BLE MR. JUSTICE T.S. THAKUR</b>  <b>HON'BLE MR. JUSTICE J.M. MALIK</b></p> <p><b><u>ORDER</u></b>  <b>21.03.2006</b></p> <p>% :</p> <p>The Assessing Officer had, for the assessment year 199</p> <p>rejected the assessee's contention that the shares held by it were its stock</p> <p>trade. The Assessing Officer was of the view that the shares were held</p> <p>long term capital investment. Aggrieved by the said order, the assessee</p> <p>preferred an appeal before the CIT (Appeals) who reversed the view</p> <p>by the Assessing Officer and held that the shares held by the assessee</p> <p>actually its stock in trade and not capital investment as held</p>

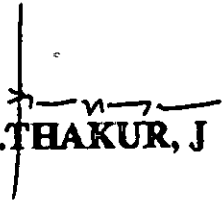



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		<p>Assessing Officer. A further appeal filed by the revenue before the Tribunal has been dismissed aggrieved whereof it is in appeal before us under Section 260A of the Income Tax Act.</p> <p>Mr. Sabharwal, learned counsel appearing for the revenue made a solitary submission for us. He urged that the Tribunal had examined the question whether the shares held by the assessee were by way of stock in trade. The Tribunal had, according to the learned counsel, proceeded on an assumption that the shares were indeed stock in trade. All that was required to be examined was whether the change in method of valuation adopted by the assessee of the said stocks was a recognised method adopted consistently and for bona fide reasons. The failure of the Tribunal to address the crucial question whether the stocks held by the assessee were its stock in trade, according to Mr. Sabharwal, vitiates the order made by the Tribunal. We regret our inability to accept the submission. The Tribunal has no doubt addressed itself only to the question of method of valuation adopted by the assessee but that is not because it ignored the issue regarding the nature of the stock held by the assessee. The fact of the matter appears to be that the revenue had not assailed the finding regarding the shares held by the assessee being stock in trade in appeal.</p>



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		<p>before the Tribunal. This is evident from a reading of the grounds of appeal raised in the memo of appeal a copy whereof has been filed by the Revenue as Annexure-4 in the paper books. The only three grounds which were urged in the said memo of appeal were as under :</p> <p>(a) On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in allowing the loss of Rs.514762/- claimed by the assessee, on account of change in the method of valuation of closing stock of investment.</p> <p>(b) On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in allowing depreciation of Rs.2,52,450/- on account of depreciation when no justified reason has been furnished by the assessee for the purchase invoice to be in the name of a non existent firm.</p> <p>(c) The order of the AO may be restored and the order of the CIT(A) may be set aside with respect to the above mentioned ground(s)."</p> <p>It is evident from the above that the question whether stocks held by the assessee were its stock in trade or capital investment never raised or argued before the Tribunal. The only question therefore, remained before the Tribunal was whether the method of valuation adopted by the assessee was a recognized method adopted consistently and for bona fide reasons. The answer to that question has been given by the Tribunal in the affirmative. No fault can, therefore</p>



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		<p>found with the order made by the Tribunal.</p> <p>Even otherwise, the question whether the shares held by the assessee were held by way of stock in trade is a question of fact. The Commissioner having found the said question in the affirmative, the Appellate Court hearing an appeal under Section 260A of the Act would not be slow in interfering with the said finding unless it is vitiated by manifest perversity. No such perversity is seen by us in the present cases. The appeals accordingly fail and are hereby dismissed.</p> <p style="text-align: right;"> T.S. THAKUR, J</p> <p style="text-align: right;"> J.M. MALIK, J</p> <p>MARCH 21, 2006 pk.</p>